

REMARKS

Specification Amendment

The specification has been amended by inserting the identifying information regarding the ATCC deposit of the seed from corn plants comprising event MON88017 as set forth in 37 CFR §1.809(d) as well as to improve clarity. No new matter is introduced.

Claim Status

Claims 1-4, 6-8, 15-17 and 19-21 have been cancelled as drawn to non-elected inventions. Applicants reserve rights to pursue these claims in future divisional(s).

Claims 13, 18 and 22-23 have been cancelled without prejudice.

Claims 9 and 10 have been amended as helpfully suggested by the Examiner. Additionally, claim 10 has been amended to clarify what has been deposited. Support for such amendment is found throughout the original application as filed.

Claims 11 and 12 have been amended to improve clarity.

New claims 25-36 have been added herein. These claims fall within the scope of the previously elected Group IV invention as a composition or process of making or using the composition pursuant to MPEP §821.04; hence, Applicants respectfully request that they be joined with claims 5, 9-12, 14 and 24 for further examination. That is, the claims readable on the previously elected invention are claims 5, 9-12, 14 and 24-36.

Support for the above new claims can be found throughout the original application as filed; in particular, in [Para 3], [Para 8], [Para 10]-[Para 17], [Para 19], [Para 22], [Para 32], [Para 33], [Para 35], [Para 42], [Para 52], [Para 53], [Para 64], [Para 67], [Para 83], [Para 85], [Para 100] and [Para 102]. No new matter is introduced. With the present amendments, claims 5, 9-12, 14 and 24-36 are currently pending.

Claim Objections

Claims 5, 9, 10, 13 and 23 stand objected to for various asserted informalities. In response, these claims have either been cancelled or amended herein. The objections are believed moot and withdrawal thereof is thus respectfully requested.

Claim Rejections - 35 USC §112, 2nd Paragraph

Claims 5, 10-13, 18 and 22-23 stand rejected under 35 USC §112, 2nd paragraph, as asserted being indefinite. In response, Applicants respectfully traverse this rejection.

It is first noted that claims 13, 18 and 22-23 have been cancelled and claim 5 amended. Thus, the rejection becomes moot in regard to the cancelled claims and is believed moot in regard to claim 5.

In regard to claims 10-12, it is noted that base claim 10 has been amended to clearly characterize that it is a representative sample of a seed of a corn plant comprising event MON88017 that has been deposited under ATCC Accession No. PTA-5582. As a result, the issue regarding claims 11-12 lacking proper antecedent bases is lifted.

In light of the foregoing amendments and remarks, the instant claims are definite and as such, the rejection under 35 USC §112, 2nd paragraph, should be withdrawn.

Claim Rejections - 35 USC §112, 1st Paragraph (Enablement)

(1) Claims 10-12 stand rejected under 35 USC §112, 1st paragraph, as asserted failing to comply with the enablement requirement. In particular, the Examiner states, “It is noted that applicants have deposited the plant but there is no indication in the specification as to what conditions the deposit was made or as to the public availability”.

In response, Applicants submit herewith a declaration by Pamela J Sisson, who is an attorney on record, duly stating that the seed will be irrevocably and without restriction or

condition released to the public upon the issuance of a patent as requested by the Examiner. Furthermore, the identifying information set forth in 37 CFR § 1.809(d) has been added to the specification as discussed above under the section titled “Specification Amendment”. With the amendments, the specification contains the accession number for the deposit, the date of the deposit, the name and address of the depository, and a description of the deposited biological material sufficient to specifically identify it and to permit examination as required by 37 CFR § 1.809(d).

In light of the foregoing remarks, Applicants respectfully request that the enablement rejection of claims 10-12 be withdrawn.

(2) Additionally, claims 5, 13, 14, 18, 22 and 23 stand rejected under 35 USC §112, 1st paragraph, as asserted failing to comply with the enablement requirement. In particular, the Examiner asserts, “the specification, while being enabling for a corn plant comprising corn event MON88017 and compositions comprising corn event MON88017, does not reasonably provide enablement for a corn plant comprising SEQ ID NO:1 or 2 or compositions made therefrom.” In response, Applicants respectfully traverse this rejection.

It is first noted that claims 13, 18 and 22-23 have been cancelled without prejudice and claims 5 and 14 amended. The enablement rejection is believed moot as to these claims.

Next, it is noted that new claims 25 and 26 have been added. As written, the new claims are directed to a corn plant, seed, or parts thereof, comprising the corn event MON88017 and composition comprising the event, respectively. As already acknowledged by the Examiner, the subject matters of these new claims are enabled.

In light of the foregoing amendments and remarks, Applicants respectfully request that the enablement rejection of the instant claims be withdrawn.

Conclusion

It is believed that the case is now in condition for allowance upon entry of the aforementioned amendments. Should any issues remain, the Examiner is invited to contact the undersigned for a quick resolution.

Respectfully submitted,

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